KESULTANAN PAHANG

v.

SATHASK REALTY SDN. BHD.

COURT OF APPEAL, KUALA LUMPUR
MAHADEV SHANKAR JCA
ABDUL MALEK AHMAD JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: C-01-6-1995]
7 APRIL 1997

LAND LAW: *Crown/State land - Sultanate lands - Whether may be leased to a body corporate - Sultanate Lands Enactment 1919 (Pahang), s. 6(i)(b) - Interpretation -"Persons not being Malay subjects" - Whether includes a corporation*

STATUTORY INTERPRETATION: *Construction of statutes - Purposive approach - Statute must be looked at as a whole - Sultanate Lands Enactment 1919 (Pahang), ss. 2, 5 & 6 - Whether Ruler empowered to permit occupation and development of Sultanate lands by corporate bodies*

CONSTITUTIONAL LAW: *Courts - Stare decisis - Court of Appeal - Whether bound by its own previous decisions - Whether there are exceptions*

CIVIL PROCEDURE: *Appeal - New points, introduction of - Whether permissible - Point not raised in High Court - Point sought to be raised before Court of Appeal - Rules of the Court of Appeal 1994, r. 18(2)*

ADMINISTRATIVE LAW: *Judicial review - Certiorari - Whether ousted - Error of law going to jurisdiction - Error of law not affecting jurisdiction - Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union (CA) - Error of law on the face of the record - Whether sufficient to attract certiorari*

WORDS & PHRASES: *"Person" - Whether limited company is a "person" - Whether Court will regard a company as an association of persons*

WORDS & PHRASES: *"Malay subject" - Sultanate Lands Enactment 1919 (Pahang), s. 5 - Whether must mean a natural person - "No person" - Whether must refer to a Malay subject - "Persons" and "subjects" - Section 6(i)(b) - Whether must only mean natural persons*

WORDS & PHRASES: *"Person" - Interpretation & General Clauses Ordinance 1948, s. 2 - "Person" and "party" - Includes any body of persons, corporate or unincorporate - Section 2(61)*

WORDS & PHRASES: *"Person" - General Clauses Enactment 1897, s. 2(xviii) - Includes any company or association or body of individuals whether incorporated or not*

WORDS & PHRASES: *"Person" - "Party" - Interpretation Acts 1948 & 1967, s. 66 - Includes any body of persons, corporate or unincorporate*

This was the appellant's appeal against the decision of the High Court in allowing the respondent's application for *certiorari* to quash the decision of the Special Tribunal ('the Tribunal') set up under s. 7 of the Sultanate Lands Enactment 1919 (Pahang) ('the SLE') in upholding the appellant's claim.

The late Sultan of Pahang had leased out a piece of Sultanate land ('the land') to the respondent under the SLE. Subsequently, the appellant instituted an action before the Tribunal claiming that: (i) by virtue of ss. 4 & 6 of the SLE, the lease was invalid on the ground that the respondent was neither a natural person nor a subject of the Ruler; and (ii) further or alternatively, the respondent was in breach of the lease and ss. 4 & 6 of the SLE in that it had purported to create a trust and sub-leases over the land without the corresponding written consent of the Chief Minister. In the result, the Tribunal held that the lease was null and void. The respondent then moved the High Court for *certiorari* to quash the decision of the Tribunal, contending that the Tribunal: (i) was wrong in law in holding that the word "persons" in s. 6(i)(b) of the SLE meant only natural persons to the exclusion of corporate bodies like the respondent; and (ii) had misconducted itself in holding that the sub-leases contravened s. 6(iii) of the SLE as this issue was not raised by the appellant in its claim. In the result, the High Court allowed the respondent's application for *certiorari* and quashed the Tribunal's decision, holding that the Tribunal had made an error of law on the face of the record. The appellant appealed.

The principal issue before the instant Court was whether the appellant was correct in its contention that the word "persons" in s 6(i)(b) of the SLE can only mean natural persons and cannot include a corporation such as the respondent.

Held:
Per Mahadev Shankar JCA (majority)

[1] The approach to adopt in the interpretation of the SLE should be a purposive one, with the avowed purpose of empowering the Ruler to permit the occupation and development of Sultanate lands by both Malay subjects and '**other than Malay subjects**'. The instant Court was **unable** to subscribe to the view that Sultanate lands should only be used for residential occupation.

[2] In law, a limited company like the respondent is also a "person". There are numerous authorities which have decided that the legal personality of a company has a nationality. Where required, the Court will regard a company as an association of persons. These entities, by law, have rights and liabilities with regard to landed property which are co-extensive with those of individuals.

[3] Article 181(1) of the Federal Constitution provides, *inter alia*, that the powers of the Rulers as hitherto had and enjoyed shall remain unaffected. Thus, the instant Court was **unable** to accede to the decision of the Tribunal which would effectively remove the power of the Ruler to lease Sultanate lands to a limited company.

[4] The need to rely on companies for the commercial development of land is sufficiently notorious to be taken judicial notice of. If the Ruler of a State thinks that some Sultanate land is ripe for commercial development then there is no reason why it should be held that the Ruler should not go ahead provided the required legal formalities are observed.

[5] The respondent's unchallenged occupancy of the land for over 25 years and the buildings it had erected thereon constituted an estoppel against the appellant.

[6] There are **exceptions** even to the rule that the Court of Appeal is bound to follow its own decisions.

Held:

Per Mokhtar Sidin JCA (majority)

[1] The High Court was right in holding that the error of law on the face of the record on the part of the Tribunal was sufficient to attract an order for *certiorari*.

[2] The statutory meaning of the word "person" is defined in s. 2 of the Interpretation & General Clauses Ordinance 1948 ('the IGCO'). Section 2(61) of the IGCO provides that "person" and "party" includes any body of persons, corporate or unincorporate. Furthermore, the General Clauses Enactment 1897 ('the GCE'), which was the predecessor of the IGCO, also provided by s. 2(xviii) that "person" shall include any company or association or body of individuals whether incorporated or not.

[3] The natural meaning of s. 6(i) of the SLE envisages that the Ruler may lease the Sultanate lands to: (i) his Malay subjects without the consent of the Chief Minister under s. 6(i)(a) of the SLE; and (ii) to any other person (**including a corporation**) not being a Malay subject with the consent of the Chief Minister under s. 6(i)(b) of the SLE.

[4] The respondent created the sub-leases after it had been granted the lease by the late Sultan of Pahang but before the execution of the deed of instrument. Thus, the subsequent execution of the deed of instrument by the Chief Minister signified that he had consented to the lease and the sub-leases. Even if the list of the sub-leases was not an appendix to the lease instrument, the Chief Minister knew of the sub-leases when he signed the lease instrument.

Held:

Per Abdul Malek Ahmad JCA (dissenting)

[1] The High Court had clearly confined its deliberation to s. 6(i)(b) of the SLE and had totally ignored s. 6(i)(a). In doing so, it had fallen into the usual error of interpreting one part of a statute without reference to another part of it where the same interpretation cannot fit it.

[1a] The High Court's interpretation would result in the word "subjects" characterising a natural person if the lease was to a Malay **but** both a natural person **and** a body corporate if the lease was to a non-Malay.

[1b] In interpreting a statute, one has to read the statute as a whole and not a particular section of it in isolation. Reading the SLE as a **whole** and in its proper context, the words "Malay subject" in s. 5 of the SLE must mean a natural person and the words "no person" must refer to a Malay subject in view of s. 2(a) & (b) of the SLE. Consequently, a Malay subject of the Ruler must be a natural person; and, the words "persons" and "subjects" in s. 6(i)(b) of the SLE can and must only mean natural persons.

[1c] All the definition sections in the interpretation laws, irrespective of when they were enacted, start off with a proviso clause and the definition certainly cannot apply when the statute being interpreted, read in its proper context, indicates otherwise. To hold that a "person" under the SLE includes a body corporate will certainly be repugnant or contrary to what the SLE intended.

[2] Despite the fact that the issue on jurisdiction was not raised in the High Court, the appellant was **not** precluded from raising the same at the appellate stage in view of r. 18(2) of the Rules of the Court of Appeal 1994. The position of the law on this point was correctly stated in *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union (CA)*.

[3] The Court of Appeal is bound by its own decisions. This was made amply clear by the Federal Court in *Kumpulan Perangsang Selangor Bhd.*

v. Zaid Mohd Noh (FC). Accordingly, the instant Court was bound to follow its own previous decision in *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union (CA)* on the issue of the jurisdiction of the High Court to review.

[Appeal dismissed by majority.]

*[**Bahasa Malaysia** Translation of Headnotes]*

UNDANG-UNDANG TANAH: *Tanah Raja/Negeri - Tanah-tanah kesultanan - Samada boleh dipajakkan kepada sebuah badan korporat - Enakmen Tanah Kesultanan 1919 (Pahang) s. 6(i)(b) - Tafsiran - Orang-orang yang bukan rakyat berbangsa Melayu - Samada termasuk sebuah perbadanan*

TAFSIRAN BERKANUN: *Pembentukan statut - Pendekatan yang mempunyai maksud - Statut mesti dilihat secara menyeluruh - Enakmen Tanah-tanah Kesultanan 1919 (Pahang) ss. 2, 5 and 6 - Samada Pemerintah diberi kuasa untuk membenarkan penghunian dan pembangunan tanah-tanah kesultanan oleh badan-badan korporat*

UNDANG-UNDANG PERLEMBAGAAN: *Mahkamah - Stare decisis - Mahkamah Rayuan - Samada terikat oleh keputusan tersendirinya yang dahulu - Samada terdapat kekecualian*

PROSEDUR SIVIL: *Rayuan - Perkara-perkara baru, pengenalan - Samada boleh dibenarkan - Perkara cuba dibangkitkan di hadapan Mahkamah Rayuan - Kaedah-kaedah Mahkamah Rayuan 1994, k. 18(2)*

UNDANG-UNDANG PENTADBIRAN: *Kajian kehakiman - Certiorari - Samada diusir - Kesilapan undang-undang berpaling pada bidangkuasa - Kesilapan undang-undang tidak menjejaskan bidangkuasa - Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union (CA) - Kesilapan undang-undang terdapat dalam rekod - Samada memadai untuk mewajarkan certiorari*

PERKATAAN DAN UNGKAPAN: *"Person" - Samada syarikat berhad merupakan "person" - Samada Mahkamah akan menganggap sebuah syarikat sebagai sebuah pertubuhan orang-orang*

PERKATAAN DAN UNGKAPAN: *"Malay subject" - Enakmen Tanah-tanah Kesultanan 1919 (Pahang) s. 5 - Samada mesti bermaksud seorang yang wajar - "No person" - Samada mesti merujuk kepada warganegara berbangsa Melayu - "Persons" dan "Subject" - Seksyen 6(i)(b) - Samada mesti hanya bermaksud orang-orang yang wajar*

PERKATAAN DAN UNGKAPAN: *"Person" - Tafsiran dan Ordinan Fasal Am 1948, s. 2 - "Person" dan "party" - Termasuk mana-mana pertubuhan orang-orang, yang diperbadankan atau tidak diperbadankan - Seksyen 2(61)*

PERKATAAN DAN UNGKAPAN: *"Person" - Enakmen Fasal Am 1897, s. 2(xviii) - Termasuk mana-mana syarikat atau perbadanan atau pertubuhan individu samada diperbadankan atau tidak*

PERKATAAN DAN UNGKAPAN: *"Person" - "Party" - Akta Tafsiran 1948 & 1967 s. 66 - Termasuk mana-mana pertubuhan orang-orang, diperbadankan atau tidak diperbadankan*

Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi dalam membenarkan permohonan responden untuk *certiorari* bagi membatalkan keputusan Tribunal Khas ('Tribunal tersebut') yang telah ditubuhkan di bawah s. 7 Enakmen Tanah-tanah Kesultanan 1919 (Pahang) ('SLE tersebut') dalam mempertahankan tuntutan perayu.

Almarhum Sultan Pahang telah memajakkan sebidang tanah Kesultanan ('Tanah tersebut') kepada responden di bawah SLE tersebut. Kemudiannya, perayu telah memulakan satu tindakan di hadapan Tribunal tersebut menuntut bahawa: (i) menurut ss. 4 & 6 SLE tersebut, pajakan itu tak sah atas ulasan bahawa responden bukan seorang yang wajar mahupun seorang keturunan Pemerintah itu, dan (ii) selanjutnya atau secara alternatifnya, responden telah memungkiri pajakan itu dan ss. 4 & 6 SLE itu, iaitu ianya telah bermaksud untuk mewujudkan satu amanah dan pajakan-pajakan kecil ke atas tanah tersebut tanpa persetujuan bertulis yang bersesuaian daripada Ketua Menteri. Akibatnya, Tribunal tersebut telah memutuskan bahawa pajakan itu adalah batal dan tak sah. Responden kemudiannya mengusul Mahkamah Tinggi untuk *certiorari* bagi membatalkan keputusan Tribunal tersebut, dalam menegaskan bahawa Tribunal tersebut: (i) salah di sisi undang-undang dalam memutuskan bahawa perkataan "persons" dalam s. 6(i)(b) SLE bermaksud hanya orang-orang yang wajar tidak termasuk pertubuhan-pertubuhan korporat seperti responden; dan (ii) telah tersalah-laku terhadap dirinya sendiri dengan memutuskan bahawa pajakan-pajakan kecil itu telah melanggari s. 6(iii) SLE tersebut kerana isu ini telah tidak dibangkitkan oleh perayu dalam tuntutannya. Hasilnya, Mahkamah Tinggi telah membenarkan permohonan responden untuk menmdapatkan *certiorari* dan membatalkan keputusan Tribunal, memutuskan bahawa Tribunal tersebut telah membuat kesilapan di sisi undang-undang menurut rekod. Perayu telah merayu.

Isu utama di hadapan Mahkamah adalah samada perayu betul dalam penegasannya bahawa perkataan "persons" dalam s. 6(i)(b) SLE hanya

bermaksud orang-orang yang wajar dan tidak boleh memasukkan sebuah perbadanan seperti responden.

Diputuskan:
Oleh Mahadev Shankar HMR (majoriti)

[1] Pendekatan yang harus diterima pakai dalam tafsiran SLE sepatutnya suatu pendekatan yang mempunyai tujuan, dengan tujuan yang dinyatakan untuk memberi kuasa kepada Pemerintah bagi membenarkan penghunian dan kemajuan tanah-tanah kesultanan oleh kedua-duanya warganegara berbangsa Melayu dan "other than Malay subjects". Mahkamah ini tidak dapat menetapkan pendapat bahawa tanah-tanah kesultanan seharusnya hanya digunakan untuk kediaman.

[2] Di sisi undang-undang, sebuah syarikat berhad seperti responden adalah juga merupakan "a person". Terdapat banyak autoriti yang telah memutuskan bahawa personaliti undang-undang sesebuah syarikat mempunyai sifat kebangsaan. Di mana diperlukan, Mahkamah akan menganggap sesebuah syarikat sebagai suatu persatuan orang-orang. Entiti-entiti ini, menurut undang-undang, mempunyai hak dan tanggungan-tanggungan berhubung dengan hartanah yang mana adalah sama ekstensif dengan yang dimiliki oleh individu.

[3] Perkara 181(1) Perlembagaan Persekutuan memperuntukan, antara lainnya, bahawa kuasa-kuasa Pemerintah sepertimana yang kini telah dan dinikmati akan kekal tidak terjejas. Oleh itu, Mahkamah ini tidak dapat menyetujui keputusan Tribunal tersebut yang mana akan dengan berkesannya menyingkir kuasa Pemerintah untuk memajakkan tanah-tanah kesultanan kepada sebuah syarikat berhad.

[4] Keperluan untuk bergantung ke atas syarikat-syarikat untuk pembangunan komersyial tanah adalah sesungguhnya tidak baik hinggakan harus mendapatkan perhatian kehakiman. Jika Pemerintah sesebuah Negeri berfikir bahawa sebilangan tanah kesultanan amat sesuai untuk pembangunan komersyial maka tidak terdapat apa-apa sebab mengapa ianya harus diputuskan bahawa Pemerintah tersebut tidak seharusnya meneruskan dengan pembangunan itu kecuali formaliti undang-undang yang diperlukan telah dipatuhi.

[5] Penghunian tanah oleh responden yang tidak dicabar selama lebih 25 tahun dan bangunan-bangunan yang didirikan di atasnya membentuk satu estopel terhadap perayu.

[6] Terdapat kekecualian walaupun terhadap kaedah bahawa Mahkamah Rayuan adalah terikat unuk mematuhi keputusannya tersendiri.

Diputuskan:
Oleh Mokhtar Sidin HMR (majoriti)

[1] Mahkamah Tinggi betul dalam memutuskan bahawa kesilapan undang-undang menurut rekod di pihak Tribunal adalah memadai bagi mendapatkan satu perintah untuk *certiorari*.

[2] Maksud statutori perkataan "person" ditafsirkan dalam s. 2 Ordinan Tafsiran dan Fasal Am 1948 ("IGCO"). Seksyen 2(61) IGCO memperuntukan bahawa "person" dan "party" termasuk mana-mana pertubuhan orang, yang diperbadankan atau tidak diperbadankan. Selanjutnya, Enakmen Fasal Am 1897 ("GCE tersebut") yang mana adalah duluan bagi IGCO juga diperuntukan oleh s. 2(xviii) bahawa "person" adalah termasuk mana-mana syarikat atau persatuan atau pertubuhan individu-individu samada diperbadankan atau tidak.

[3] Maksud sebenar s. 6(i) SLE mnembayangkan bahawa Pemerintah boleh memajakkan tanah-tanah kesultanan kepada: (i) warganegara-warganegara Melayunya tanpa kebenaran khas Ketua Menteri di bawah s. 6(i)(a) SLE; dan (ii) kepada mana-mana orang lain (termasuk sebuah perbadanan) yang tidak merupakan warganegara Melayu dengan kebenaran Ketua Menteri di bawah s. 6(i)(b)SLE tersebut.

[4] Responden telah mewujudkan pajakan kecil tersebut selepas ianya diberikan pajakan oleh almarhum Sultan Pahang tetapi sebelum penyempurnaan ikatan suratcara. Dengan itu, penyempurnaan ikatan suratcara yang kemudiannya oleh Ketua Menteri telah menunjukkan bahawa beliau telah membenarkan pajakan dan pajakan-pajakan kecil tersebut. Walaupun jika senarai pajakan-pajakan kecil itu telah tidak merupakan satu lampiran kepada suratcara pajakan itu, Ketua Menteri mengetahui mengenai pajakan-pajakan kecil itu ketika beliau menandatangani suratcara pajakan tersebut.

Diputuskan:
Oleh Abdul Malek HMR (menentang)

[1] Mahkamah Tinggi telah dengan jelasnya menetapkan pertimbangan mendalamnya pada s. 6(i)(b) SLE dan telah sesungguhnya tidak menghiraukan s. 6(i)(a). Dengan melakukan sedemikian, ianya telah melakukan kesilapan biasa mentafsirkan satu bahagian statut tanpa merujuk kepada satu bahagian yang lain di mana tafsiran yang sama tidak bersesuaian.

[1a] Tafsiran Mahkamah Tinggi akan mengakibatkan perkataan "subjects" bersifat orang yang wajar jika pajakan itu diberikan kepada seorang

Melayu **tetapi** kedua-duanya orang yang wajar **dan sebuah** pertubuhan korporat jika pajakan itu diberikan kepada bukan Melayu.

[1b] Dalam mentafsirkan sesuatu statut, seseorang haruslah membaca statut itu secara menyeluruh dan bukannya sesuatu bahagian yang khusus semata-mata. Membaca SLE seluruhnya dan menurut konteks yang sewajarnya, perkataan "Malay subject" dalam s. 5 SLE semestinya bermaksud seorang yang wajar dan perkataan-perkataan "no person" semestinya merujuk kepada warganegara berbangsa Melayu memandangkan s. 2(a) & (b) SLE. Akibatnya, seorang warganegara berbangsa Melayu, semestinya seorang yang wajar, dan perkataan "persons" dan "subject" dalam s. 6(i)(b) SLE boleh dan semestinya hanya bermakna orang-orang yang wajar.

[1c] Kesemua seksyen tafsiran dalam undang-undang tafsiran, tanpa mengiharukan bila ianya dijadikan undang-undang bermula dengan fasal peruntukan dan tafsiran itu tentu sekali tidak boleh dipakai apabila statut yang ditafsirkan, dibaca dalam konteksnya yang wajar menunjukkan yang sebaliknya. Bagi memutuskan bahawa: "a person" di bawah SLE termasujk sebuah pertubuhan korporat tentu sekali akan menjadi bertentangan dengan apa yang dimaksudkan oleh SLE.

[2] Walaupun terdapat hakibat bahawa isu ke atas bidangkuasa telah tidak dibangkitkan dalam Mahkamah Tinggi, perayu adalah tidak terhalang daripada membangkitkan perkara yang sama di peringkat rayuan memandangkan k. 18(2) Kaedah-kaedah Mahkamah Rayuan 1994. Kedudukan undang-undang dalam perkara ini telah dinyatakan dengan betul dalam *Syarikat Kenderaan Melayu Kelantan Berhad v. Transport Workers Union (CA).*

[3] Mahkamah Rayuan terikat oleh keputusannya sendiri. Ini jelas dilakukan oleh Mahkamah Persekutuan dalam *Kumpulan Perangsang Selangor Berhad v. Zaid Mohd Noh (FC).* Berikutan itu, Mahkamah ini adalah terikat untuk mengikuti keputusannya sendiri yang dahulu dalam *Syarikat Kenderaan Melayu Kelantan Berhad v. Transport Workers Union (CA)* mengenai isu budibicara Mahkamah Tinggi untuk kajian semula.

[Rayuan ditolak oleh majoriti.]

Cases referred to (majority):

South East Asia Fire Bricks v. Non-Metallic Products Manufacturers Employees Union & Ors. [1981] AC 363 ***(cit)***

Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union [1995] 2 CLJ 743 ***(cit)***

Hendry v. De Cruz [1949] MLJ Supp. 25 ***(cit)***

Re Dodwell & Co. Ltd.'s Trust Deed [1978] 2 All ER 738 ***(refd)***
Duff Development Company Limited v. Government of Kelantan [1924] AC 797 ***(cit)***

Cases referred to (dissenting):
South East Asia Fire Bricks v. Non-Metallic Products Manufacturers Employees Union & Ors. [1981] AC 363 ***(refd)***
Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union [1995] 2 CLJ 743 ***(foll)***
Kumpulan Perangsang Selangor Bhd. v. Zaid bin Haji Mohd. Noh [1997] 2 CLJ 11 ***(foll)***
Re Dodwell & Co. Ltd.'s Trust Deed [1978] 2 All ER 738 ***(refd)***

Legislation referred to:
Federal Constitution, Art. 181(1)
Industrial Relations Act 1967, ss. 29(3)(a), 33, 33B(1)
Interpretation Acts 1948 & 1967, Part II
Interpretation & General Clauses Ordinance 1948, s. 2(61)
Law of Property Act 1925 [UK], s. 164(1)
Pahang General Clauses Enactment No. 1 of 1897, s. 2 (xviii)
Rules of the Court of Appeal 1994, r. 18(2)
Rules of the High Court 1980, O. 53 r. 1(2), O. 57
Sultanate Lands Enactment (Pahang Enactment No. 1) of 1919, ss. 2, 4, 5, 6, 7

Other source referred to:
The Laws of the Federated Malay States, A.B. Voules, Vol. III, p. 160
Halsbury Laws of England, Vol. 4, para. 903, Vol. 8, paras. 837-65
Pennington's Company Law, 6th Edn., pp. 46-48
Modern Company Law, L.C.B. Gower, 6th Edn., p. 61
Principles of Statutory Interpretation, Guru Prasanna Singh, 5th Edn. 1992

[Appeal from High Court Malaya, Kuantan; Originating Motion No: 25-6-1992; [1995] 1 CLJ 572]

For the appellant - Bastian P. Vendargon (G.J. Goldie with him); M/s. Balendran Chong Bodi & Noorhuda
For the respondent - Chin Yew Meng; M/s. Allen & Glenhill

JUDGMENT

Mahadev Shankar JCA:

Only two submissions were made before us by the appellant. The first was that this Court could not reverse the decisions of the Privy Council and therefore that *South East Asia Fire Bricks v. Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* [1981] AC 363 was still binding on us and *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union* [1995] 2 CLJ 743 should be ignored as being *ultra vires*.

My learned brother Abdul Malek Ahmad JCA has dealt with this aspect of the matter in some depth and I do not need to say anymore about it except that there are exceptions even to the rule that the Court of Appeal is bound to follow its own decisions: See *Hendry v. De Cruz* [1949] MLJ Supp. 25 at p. 27.

The second submission poses the question whether the Ruler of the State of Pahang had the power to lease Sultanate lands to "a body of persons corporate" or a limited company like Sathask Realty Sdn. Bhd. ('Sathask').

Section 2 of the Pahang General Clauses Enactment No. 1 of 1897 reads:

> 2. In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context -
>
> (xviii) "Person" shall include any company or association or body of individuals whether incorporated or not.

Pahang already had a Companies Enactment in 1897 – See Pahang Enactment No. 19 of 1897. This was subsequently consolidated and amended by The Companies Enactment 1917 (Enactment No. 20 of 1917) (See *The Laws of the Federated Malay States* by A.B Voules Vol. III p. 160).

So by the time the Sultanate Lands Enactment (Pahang Enactment No. 1 of 1919) ('the Enactment') came into force on 6 June 1919 the concept of the corporate personality was well entrenched into the laws of Pahang.

Originally leases under s. 6 of the Enactment were restricted to a term not exceeding 50 years. From 28 December 1972 this period was extended to 99 years by Pahang Enactment No. 9 of 1972.

The lease to Sathask first granted on 1 July 1964 was for a period of 50 years. After the Enactment was amended in 1972 a new lease was substituted for the existing lease for a period of 99 years.

The Tribunal Khas, constituted under s. 7 of the Enactment (the special tribunal) took the view that the entities to whom Sultanate Lands could be leased had to be persons of flesh and blood. In supporting this conclusion appellant's Counsel referred us to *Re Dodwell & Co. Ltd.'s Trust Deed* [1978] 2 All ER 738 (Dodwell), and *Halsbury Laws of England* Vol. 4 para. 903, and Vol. 8 paras. 837-65. With respect, both these authorities were in fact against him.

In *Dodwell* the issue was whether the word "person" in s. 164(1) of the Law of Property Act 1925 which restricts accumulations of income could apply to

a company. Walton J held it could not because the original statute which the 1925 Act consolidated, "was by its, phraseology and expression intended to be confined to natural persons". It is manifestly apparent that the Accumulations Act 1800, and the New South Wales Conveyancing Act 1919 dealt with persons equated with life and death. At the risk of some distortion I would emphasise that the object of this Legislation was to restrict the accumulation of income beyond a specified number of years from the **death** of the settler.

The Enactment clearly recognised that the Ruler had power to lease Sultanate lands **both** to his Malay subjects **and** to others.

Sections 5 and 6 of the Enactment must of course be construed together. By s. 6(i)(a) the power of the Ruler of the State to lease Sultanate lands to his Malay subjects was unconditional and absolute. The restrictions only came into play if the lease was to be to a **person** who was not a Malay subject of the Ruler.

In such a situation the concurrence of both the Ruler and the Menteri Besar was required either by way of lease or other written authority. The interposition of the Menteri Besar must have been to ensure that the proposed transaction was in the best interests of both the ruler and the State.

These formal requirements were scrupulously observed by His Royal Highness the late Sultan of Pahang and the Menteri Besar not once but twice in the case of the Sathask lease - first when the lease was originally granted, and secondly when the lease for 99 years was substituted for it on 29 May 1973.

The need to rely on companies for the commercial development of land is sufficiently notorious to be taken judicial notice of *(Duff Development Company Limited v. Government of Kelantan* [1924] AC 797 is one instance). If the Ruler of the State thought that some Sultanate land was ripe for commercial development I fail to see why it should be held that the Ruler should not go ahead provided the required legal formalities are observed.

I am very much mindful of the Art. 181(1) of the Federal Constitution by which, "subject to the provisions of this Constitution, ... the powers ... of the rulers ... as hitherto had and enjoyed shall remain unaffected." I am unable to accede to the decision of the tribunal which will effectively remove the power of the ruler to lease Sultanate lands to a limited company.

Another aspect of the proper construction of the Enactment is the extension of the permitted period to 99 years. I agree with respondent's Counsel that the effective life of a human being rarely stretches that far, and if a single lessee is envisaged in this situation, a corporation is a much better candidate.

I am unable to subscribe to the view that Sultanate lands should only be used for residential occupants. In law a limited company like Sathask is also a "person".

The passages from *Halsbury's* were quoted to support the contention that the word "subject" of necessity implied living persons only. With the greatest respect this cannot be right. There are numerous authorities which have decided that the legal personality of a company has a nationality. (See *Pennington's Company Law*, Sixth Edn. pp. 46-48). Where required the Court will regard the company as an association of persons. Indeed the world we live in is now pervaded by multi-national companies (See *Modern Company Law* by L.C.B. Gower Sixth Edn. p. 61). These entities by law have rights and liabilities with regard to landed property which are co-extensive with that of individuals.

The approach I have adopted to the interpretation of Enactment is a purposive one, and its avowed purpose was to empower the Ruler to permit the occupation and development of Sultanate lands by Malay subjects and "others than Malay subjects".

The issue of the sub-leases was not ventilated before us. According to respondent's Counsel it was not taken in the Court below. So I do not need to deal with it. As far as the justice of the case goes, the unchallenged occupancy of the subject land for over 25 years by Sathask and the buildings they have erected thereon constitute an estoppel against the appellant, but in the circumstances of this case I do not need to elaborate on this aspect either.

I therefore reiterate that this appeal be dismissed with costs.

Abdul Malek Ahmad JCA:

We heard this appeal on 2 December 1996 and had, by a majority decision, dismissed it with costs. However, it is my considered view that it should be allowed with costs here and in the Court below and the deposit refunded to the appellant.

The only issues that arise here relate to the question of jurisdiction and to the principles of statutory interpretation. It is my finding that the appellant cannot succeed on the issue of jurisdiction but that they have a good case on whether the Sultanate Lands Enactment 1919 (Cap. 221) of Pahang (hereafter 'the Enactment') applies only to natural persons or to corporate bodies as well. The second issue is actually the only issue both in the Court below and before us but, for the purpose of clarity, I shall take some time to deal with the first issue as well.

On the first issue, the ouster clause is found in s. 7(1) of the Enactment and reads:

> 7(i) No Court shall have jurisdiction to hear or adjudicate upon any claim to the Sultanate lands or any portion thereof or interest therein, but every such claim may be heard and determined by the Menteri Besar with the aid of two members of the Legislative Assembly appointed by the Ruler of the State in Council to sit with the Menteri Besar as assessors and assist in the determination of such claim. The Menteri Besar shall not in determining such claim be bound to conform to the opinions of the assessors. Every determination of a claim by the Menteri Besar under this section shall be final to all intents and purposes and there shall be no appeal therefrom.

The statement filed by the respondent pursuant to O. 53 r. 1(2) of the Rules of the High Court 1980 on 23 January 1992 for the orders of *mandamus* and *certiorari* categorises the grounds as follows:

> (i) The decision that the said Head Lease dated 28 May 1973 is null and void was wrong in law. The second respondent erred in law in holding that the provisions "persons not being Malay subjects" under s. 6(i) of the Sultanate Lands Enactment 1919 meant only natural persons to the exclusion of incorporated companies.
>
> (ii) The 2nd respondent misconducted itself by holding that the sub-leases created thereafter are null and void as such a decision is also wrong in Law. The 2nd respondent misconducted itself in holding that the sub-leases contravene s. 6 (iii) of the Sultanate Lands Enactment 1919 as this was not an issue raised by the 1st respondent in its claim.

Learned Counsel for the appellant contended that only when the tribunal acts outside its jurisdiction can the High Court interfere based on an error of law which renders the tribunal lacking in jurisdiction or acting outside its jurisdiction or makes a decision which results in a nullity for example when it breaches the rules of natural justice. If there is no error of law that goes to jurisdiction, he added, then the High Court has no jurisdiction. He had further submitted that we have passed many stages of development of the law as regards ouster clauses and to what extent the judiciary can interfere when the legislature has made express provisions.

In the celebrated case of *South East Asia Fire Bricks Sdn. Bhd. v Non-Metallic Mineral Products Manufacturing Employees Union and Others* [1981] AC 363, the facts were that the then s. 29(3)(a) of the Industrial Relations Act 1967 (hereinafter 'the Act') provides that subject to the Act, an award of the Industrial Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question

in any Court of law. A dispute arose between the appellant company and the respondents, a trade union and certain of its members employed by the company. The dispute was referred under the Act to the Industrial Court which made an award in favour of the respondents. The company applied to the High Court for an order of *certiorari* to quash the award on the ground that it contained errors of law on its face. The High Court granted the order. On appeal by the respondents, the Federal Court held that there was no error of law and restored the Industrial Court's award. The company appealed to the Judicial Committee of the Privy Council.

On the question whether the jurisdiction of the High Court to quash an award of the Industrial Court was excluded by s. 29(3)(a) of the Act, it was held by the Judicial Committee in dismissing the appeal that the words of that section in the Act providing that an Industrial Court award should not be "quashed" or "called in question in any Court of law" were wide enough to oust the jurisdiction of the High Court to review the decision by *certiorari* although para. (a) would not exclude the jurisdiction of the High Court if the Industrial Court had exceeded its jurisdiction; that accordingly there was no power to grant *certiorari* for an error of law on the face of the award which did not affect the jurisdiction of the Industrial Court and therefore since the only allegation was that there were errors of law on the face of the award, the High Court had no jurisdiction to grant an order of *certiorari*.

Learned Counsel's first proposition on the first issue was that the *Fire Bricks* case went from the Federal Court to the Privy Council and it is therefore binding on our Courts. At the most, he added, only and only maybe the Federal Court can disapprove of the decision and change the ruling being the highest Court in the land but not the Court of Appeal as it did in *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union* [1995] 2 CLJ 743. In effect, he reiterated, we ought to reject the decision in the *Syarikat* case.

That case was an appeal against the decision of the learned High Court Judge, quashing by way of *certiorari* an award of the Industrial Court, and ordering by *mandamus* that the said Court reconsider the matter in question according to law. The appeal primarily turned on two issues, namely, as to the effect of ouster clauses in Acts of Parliament, and secondly, as to the proper construction to be given to sub-ss. (1) and (2) of s. 33 of the Act. The facts were that by an award given on 2 June 1988 (the first award), the Industrial Court ruled that the appellant had dismissed its workmen, who were members of the respondent without just cause and excuse, and ordered that the appellant reinstate them and pay their "backwages". By articles 18 and 20 of the collective agreement concluded between the parties, however, it was stipulated that apart from the normal wage, the workmen were also entitled to a special

relief allowance as well as a yearly bonus. In consequence, pursuant to the said award, the workmen claimed the extra emoluments contending that the same were covered by the expression "backwages". The appellant thought otherwise and refused to pay the said benefits. The respondent applied to the Industrial Court under s. 33(1) of the Act for an interpretation of the first award and the two articles aforesaid. By an award dated 6 January 1994 (the second award), the Industrial Court took the view that there was no ambiguity in the expression "backwages", or the award, and therefore refused interpretation. The respondent took out a motion in the High Court and applied, successfully, for leave to issue the said *certiorari* and *mandamus*. The appellant appealed. Before the Court of Appeal, the appellant raised *inter alia* the following issues:

(a) that on the facts it was improper of the respondent to have resorted to s. 33(1) of the Act;

(b) that, in any case, in the face of the privative clause in s. 33B(1) of the Act, it was not open for the High Court to review the Industrial Court's award in question;

(c) that the first award, being unambiguous, required no interpretation, and therefore the Industrial Court committed no error of law in the second award in refusing to interpret it.

Learned Counsel's second proposition on the first issue was that the decision in the *Syarikat* case should be confined to the ouster clause in s. 33B of the Act and not the Enactment as here we are concerned with State Legislation which in this instance has been enacted to jealously guard the State lands and that is why s. 7 of the Enactment had been so strongly worded.

Exclusive jurisdiction had been given to the tribunal, he repeated, and only if the tribunal exceeds its jurisdiction or if its decision is a nullity can the High Court interfere. The tribunal had been entrusted and empowered to hear according to statute and there are two lines of authorities in this situation. One is that it can be quashed if there is no ouster clause and the other if the tribunal exceeds its jurisdiction or if its decision results in a nullity even if there is an ouster clause.

When asked to reply, learned Counsel for the respondent had complained that the jurisdiction point was not taken up at the High Court level and in any case, if we were to follow the *Syarikat* case reasoning, there was nothing to that point.

He distinguished the wording of the then s. 29(3)(a) of the Act which states:

> Subject to this Act, an award of the [Industrial] Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question in any Court of law.

and argued that s. 7 of the Enactment was differently worded. He had consequently referred to various extracts of the judgment in the *Syarikat* case which need not be restated here.

Despite the fact that the issue of jurisdiction was not raised in the High Court, it does not prohibit the appellant from raising it at the appeal stage in view of r. 18(2) of the Rules of the Court of Appeal 1994. All the relevant authorities on the point of both the superior Courts in England and in this country had been considered and analysed in the *Syarikat* case in great detail and I can only conclude that the position has been correctly stated.

In any case, we are bound by our own decision. This has been made quite clear by the Federal Court in *Kumpulan Perangsang Selangor Bhd. v. Zaid Mohd. Noh* [1997] 2 CLJ 11 where Gopal Sri Ram JCA had enunciated as follows:

> Counsel for the appellant, however, invited us to depart from the majority views expressed in *Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 and to uphold the minority judgment of Wan Yahya FCJ. We must emphatically reject this invitation for two reasons.
>
> First, although *Rama Chandran* was decided by a majority, it is nevertheless a decision of this Court. Contrary to any view that may be held in any quarter, this Court is bound by its own decisions, whether arrived at unanimously or by a majority. And the correctness of the decisions of this Court may not be called into question save and except before a larger Bench of this Court specially convened by or upon the direction of the Chief Justice. It is therefore not open for one Division of this Court to reverse the decision of another Division given in an earlier case. If a contrary situation be permitted, then, no decision of the apex Court will be safe as precedent and uncertainty in the law will prevail. For like reason, the Court of Appeal is bound by its own decisions. See, *Hendry v. De Cruz* [1949] MLJ (Supp.) 25.
>
> In dealing with an argument such as that presented before us, it is useful to remind ourselves of the basic philosophy of our common law. That philosophy is housed in the expression "certainty through precedent". Its main object is to enable members of the public to organise their affairs in accordance with law and for legal advisers to advise their clients with fair accuracy about the state of law in order to avoid wasteful and unnecessary litigation. A rule by which one Division of this Court is not to be bound by the decisions of another division will therefore undermine the very foundations upon which our common law rests and cannot therefore be countenanced.

The question of jurisdiction, therefore, fails.

As for the second issue, learned Counsel for the appellant had referred to s. 2 of the Enactment, which he says, indicates that the person must be a natural person.

Section 2 of the Enactment states:

> 2. For the purposes of this Enactment
>
> (a) "Malay" means a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Moslem religion;
>
> (b) every Malay born within the State shall be deemed to be a subject of the Ruler of the State.

For this purpose, it is also relevant to cite s. 6 of the Enactment:

> 6(i) The Sultanate lands or portions thereof may from time to time be leased
>
> (a) by writing under the hand of the Ruler of the State to Malay subjects of the said Ruler, or
>
> (b) by writing under the hand of the Ruler of the State and of the Menteri Besar to persons not being Malay subjects of the said Ruler,
>
> for any term not exceeding 99 years.
>
> (ii) (xxx);
>
> (iii) No right or interest in any lease of the Sultanate lands or any portion thereof shall, except in accordance with a written permission in that behalf signed by the Ruler of the State and by the Menteri Besar, be sold or transferred to, or charged in favour of, any person not being a Malay subject of the Ruler of the State. Every attempt to sell or transfer or charge in contravention of the provisions of this sub-section shall be null and void and of no effect. Any permission granted under this sub-section may be subject to such condition and limitation (if any) as the Ruler of the State may, with the advice of the Menteri Besar, impose.
>
> (iv) Notwithstanding anything contained in the Powers of Attorney Enactment, no power of attorney whereof the donee or any donee is a person not being a Malay subject of the Ruler of the State shall in so far as it relates to any right or interest of a Malay subject of the Ruler of the State in any lease of the Sultanate lands or any portion thereof be irrevocable.

Reading s. 6 as a whole, he maintained, "subject" can never mean a body corporate but a natural person. Similarly with the wording in s. 5 which reads:

5. No person not being a Malay subject of the Ruler of the State shall occupy any portion of the Sultanate lands unless he holds a lease or other written authority in that behalf signed by the Ruler of the State and by the Menteri Besar.

Learned Counsel continued by saying that Part II of the Interpretation Acts, 1948 and 1967 (Act 388) applied and although the definition of "person" in that Part at s. 66 states that "person" and "party" includes any body of persons, corporate or unincorporate, the opening paragraph of that section states "unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided". He added that as early as 1919 a body corporate was never contemplated to be included in the definition of "person" citing *Re Dodwell & Co. Ltd.'s Trust Deed* [1978] 3 All ER 738 as a case on point where Walton J, having considered the use of the terms "grantor", "settler", "devisor" and "testator" in the relevant law, held that it must refer to an individual person and not a body corporate.

But in a manner of springing a surprise, learned Counsel for the respondent had referred to the General Clauses Enactment 1987 which would apply to the Enactment where "person" is defined as "shall include any company or association or body of individuals whether incorporated or not", and in view of the scarcity of natural persons in 1919, he submitted that the learned trial Judge was correct in his finding.

The learned trial Judge in dealing with the issue had stated as follows:

> As stated in Part II of the Interpretation Acts 1948 and 1967, the words and phrases as defined in the Acts shall have the meanings assigned to them unless there is something in the subject or context inconsistent with such construction or unless it is otherwise defined by a given statute. Therefore, the question one should ask in this case is whether there is anything repugnant or inconsistent within the context of the Enactment which militates against the adoption of the meaning as provided in Part II of Interpretation Acts 1948 and 1967. With respect I find none. On the contrary, in the context of s. 6 of the Enactment, I am of the view that the expression "person" should be given the broader meaning as defined in the Interpretation Acts 1948 and 1967. For it is fallacious to say that the word "subject" appearing in ss. 4, 5 and 6 has the effect of narrowing the meaning of the expression "persons" as found in s. 6(i)(b) of the Enactment. This, becomes apparent if one were to ask the question: "Is a body of persons, corporate or unincorporate, a person not being a Malay subject of the Ruler of Pahang?" I am sure the answer to that is in the affirmative. That being so, how could one then say that the expression 'persons' in the said s. 6(i)(b) of the Enactment does not include a body corporate.

> As for the argument of the respondents that, it is the intention of the legislature to restrict the leasing of Sultanate lands to natural persons so that only natural persons could derive benefit from leases of such land, my short answer to that is: if it so intended the legislature could have expressly provided to that effect in clear words. On the contrary, the legislature had chosen to use the general expression "person" in the Enactment without assigning any special meaning to it, therefore, in the circumstances, the meaning assigned to it in Part II of the Interpretation Acts 1948 and 1967 should apply.
>
> From the grounds of decision of the 2nd respondent I am satisfied that the 2nd respondent could not have come to that decision had it rightly interpreted the relevant statutory provisions. Misinterpretation of a statute or any other legal document or a rule of common law clearly constitutes an error of law. (See *Halsbury's Laws of England* (4th Edn.) Vol. 1 para. 63). And where upon the face of the proceedings themselves, it appears that the determination or decision of an inferior tribunal is wrong in law, *certiorari* to quash it will be granted.

The question the learned trial Judge posed in the first paragraph of the extract of his judgment as regards s. 6(i)(b) of the Enactment appears to apply only to persons not being Malay subjects and he has clearly confined himself to s. 6(i)(b) of the Enactment and totally ignored the provisions of s. 6(i)(a) of the same Enactment. In so doing, he has fallen into the usual error of interpreting part of a statute without reference to another part of it where the same interpretation cannot fit in. It is made worse here as different interpretations are given to the same word "subjects" in separate paragraphs, and there are only these two paragraphs, of the same section. As to his argument that the Enactment should have clarified that it was to apply only to natural persons and not drafted the way it was goes against the grain of the principles of statutory interpretation and the provisos to all the definition sections in all existing legislation. That, of course, is not the point as otherwise we would not have to deal with the issue in the first place.

My learned brother Mokhtar Sidin JCA in the majority judgment appears to be on the same wavelength as the learned trial Judge as he has said "We have scrutinized s. 6 and in our view the natural meaning of s. 6(i) of the Enactment envisages that the Ruler could lease or sell the Sultanate lands to two categories of people. The first under s. 6(i)(a) whereby the Ruler by his writing without the consent of the Menteri Besar can lease or sell any of the lands to the Malay subjects of his. Under s. 6(i)(b) the Ruler of the State by writing could lease his land to any other person (including a corporation) not being a Malay subject of his but it must be with the consent of the Menteri Besar. To read it otherwise would not give the required effect to that section.".

To my mind, this would result in the word "subjects" applying to a natural person if the lease is to a Malay but both a natural person and a body corporate if the lease is to a non-Malay. Does it mean "subjects" in s. 6(i)(a) of the Enactment connote a natural person but "persons not being Malay subjects" in s. 6(i)(b) of the Enactment mean a natural person as well as a body corporate? Should there be different meanings of the word 'subjects' for a Malay and a non-Malay and in the same section? What about a "Malay" corporation? And is there such a thing as a "Malay" and "non-Malay" body corporate probably depending on the racial and religious composition of its directors? I would say there probably could depending on the declaration in the particular law that incorporates that particular body. What if there is a mixture of both? Again, that reasoning is confining oneself to s. 6 of the Enactment alone whereas it is my opinion that in interpreting any statute, one has to read the Enactment as a whole and not any particular section by itself. Section 5 of the Enactment begins with "No person not being a Malay subject ...". As I have stated earlier, "Malay subject" reading the Enactment as a whole and in its proper context must mean a natural person and the words "no person" must also refer to a Malay subject in view of s. 2 of the Enactment.

Once again, we have to look at s. 2 of the Enactment. Section 2(a) of the Enactment is of particular interest. A "Malay" is a person belonging not to the Malay race but "to any Malayan race" provided he habitually speaks the Malay language or any Malayan language and professes the Muslim religion. Can a body corporate belong to any Malayan race? It probably could 'speak' the Malay language or any Malayan language through its resolutions but can it profess the Muslim religion?

Section 2(b) of the Enactment goes one step further. To be a subject, one has to be a Malay, as defined in s. 2(a) of the Enactment and one has to be "born". Of course, it can be argued that a body corporate can be born on being incorporated but that would be stretching things a bit far and as the learned trial Judge had commented, the draftsman should have made things clearer by probably using the words "incorporated" as well in this instance.

The Malay subject of the Ruler must therefore be a natural person. Going then to ss. 5 and 6(i)(b) of the Enactment where the respective categories of "no person not being a Malay subject" and "persons not being Malay subjects" appear, can we certainly and convincingly conclude that it must refer to bodies corporate as well? I find that this is not the correct approach to construe a statute. I was more inclined, therefore, to hold that in view of the provisions in the Enactment read as a whole, a "person" and "subject" there must mean a natural person.

All the definition sections in the interpretation laws, irrespective when they were enacted, start off with a proviso clause and the definition certainly cannot apply when the statute being interpreted read in its proper context indicates otherwise as in this case. Hence, even s. 2 of the General Clauses Enactment 1897 begins with "In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context."

To say that "person" in the Enactment includes a body corporate would certainly be repugnant or contrary to what the statute intended and I would, therefore, with respect hold that the word "person" and "subject" in the Enactment can and must only mean a natural person.

Before I conclude, I must emphasise that on the facts of this case, there is actually no ambiguity at all. Pages 9 to 12 of the *Principles of Statutory Interpretation* by Guru Prasanna Singh 5th Edn., 1992 state:

> But words used by the legislature do not always bear a plain meaning. Moreover, Judges quite often differ on the issue whether certain words are plain and even when there is an agreement that the words are plain, difference of opinion may result on the question as to what the plain meaning is. In case of doubt, therefore, it is always safe to have an eye on the object and purpose of the statute, or reason and spirit behind it.
>
> "I say that we must look to what the purpose is", was said by Lord Cairns (*Arthur Hill v. East and West India Dock Co.* [1884] 9 AC 448 (HL)), and it was observed by Sir John Nicholl that "the key to the opening of every law is the reason and the spirit of the law" (*Brett v. Brett*, [1826] 3 Add 210; 162 ER 456). This aspect of 'purpose' is the very foundation of the rule in *Heydon's* case reported by Lord Coke as far back as 1584. Statutes "should be construed not as theorems of Euclid", said Judge Learned Hand, "but with some imagination of the purposes which lie behind them." (*Lehigh Valley Coal Co. v. Yensavage*, 218 Fed 547). "Each word, phrase or sentence", observed Mukherjea, J "is to be construed in the light of general purpose of the Act itself" (*Poppatlal Shah v. State of Madras*, AIR 1953 SC 274). In the words of K. Iyer, J the interpretative effort "must be illumined by the goal though guided by the word" (*Smt. Kanta Goel v. B.D. Pathak*, AIR 1977 SC 1599). For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, (*Henrietta Muir Edwards v. AG of Canada*, AIR 1930 PC 120) although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of "intention". Without intending to lay down a precise and exhaustive list of external aids, Lord Somervell had stated: "The mischief against which the statute is directed and, perhaps though to an undefined extent the surrounding circumstances can be considered. Other statutes in *pari materia* and the state of the law at the time are admissible" (*Attorney-General v. HRH Prince Ernest Augustus* [1957] 1 All ER 49 (HL)). These external aids are also

brought in by widening the concept of "context" "as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia* and the mischief which the statute was intended to remedy." (*London Borough of Ealing v. Race Relation Board* [1972] 1 All ER 105 (HL)). In the words of Chinappa Reddy, J: "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted" (*Reserve Bank of India v. Pearless General Finance and Investment Co.* [1978] 1 SCC 424). The principle as stated by Mr. Justice Holmes is to the following effect: "You construe a particular clause or expression by construing the whole instrument and any dominant purposes that it may express. In fact, intention is a residuary clause intended to gather up whatever other aids there may be to interpretation beside the particular words and the dictionary" (*"Cases and other Materials on Legislation"*, by Reid Macdonald and Fordham, 2nd Edn, p. 1005).

According to *Blackstone* the most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are "either the words, the context; the subject matter, the effects and consequence, or the spirit and reason of the law" (*Blackstone, Commentaries on the Laws of England*, Vol. 1, p. 59).

Then, at pp. 20 to 22, the author has this to say:

Statute Must Be Read as a Whole in its Context

When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes *in pari materia,* the general scope of the statute and the mischief that it was intended to remedy (*AG v. HRH Prince Ernest Augustus* [1957] 1 All ER 49 (HL)).

It is a rule now firmly established (*Philips India Ltd. v. Labour Court* [1985] 3 SCC 103) that the intention of the legislature must be found by reading the statute as a whole. The rule is referred to as an "elementary rule" by Viscount Simonds; (*AG v. HRH Prince Ernest Augustus* [1957] 1 All ER 49 (HL)) a "compelling rule" by Lord Somervell Of Harrow; and a "settled rule" by B.K. Mukherjee, J (*Poppatlal Shah v. State of Madras, AIR 1953 SC 274*) "I agree", said Lord Halsbury, "that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it" (*Charles Robert Leader v. George F. Diffey*, [1888] 13 AC 294). And said Lord Davey: "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or

series of statutes relating to the subject-matter." (*Canada Sugar Refining Co. v. R* [1898] AC 735). It is spoken of construction "*ex visceribus actus*" (*Newspapers Ltd. v. Industrial Tribunal,* UP, AIR 1957 SC 532; *Superintendent and Remembrancer, West Bengal v. Abani Maity,* AIR 1979 SC 1029: [1979] 4 SCC 85). "It is the most natural and genuine exposition of a statute", laid down Lord Coke "to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers" (*Punjab Beverages Pvt. Ltd. v. Suresh Chand,* AIR 1978 SC 995; *Philips India Ltd. v. Labour Court* [1985] 3 SCC 103: AIR 1985 SC 1034). To ascertain the meaning of a clause in a statute the Court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself (*Queen v. Eduljee Byramjee,* [1846] 3 MIA 468 (PC)), and, "the method of construing statutes that I prefer", said Lord Greene, MR "is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word'? (*Re Bidie (deceased),* [1948] 2 All ER 995 (CA))". As stated by Sinha, CJ: "The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. (*State of W.B. v. Union of India,* AIR 1963 SC 1241).

The rule is of general application as even plainest terms may be controlled by the context (*Bentley v. Rotherham* [1876] 4 Ch. D 588), and "it is conceivable,: as Lord Watson said, "that the legislature whilst enacting one clause in plain terms, might introduce into the same statute other enactments which to some extent qualify or neutralise its effect" (*Administrator General of Bengal v. Premlal Mullick* [1895] ILR 22 Cal 788 22 IA 107). The same word may mean one thing in one context and another in a different context (*D.N. Banerji v. P.R. Mukherjee,* AIR 1953 SC 58). For this reason the same word used in different sections (*Forbes v. Attorney-General of Manitoba,* [1937] 1 All ER 249 (PC)) of a statute or even when used at different places in the same clause or section (*Ramnarayan Mor v. State of Maharashtra,* AIR 1964 SC 949) of a statute may bear different meanings. The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole. How far and to what extent each component part of the statute influences the meaning of the other part would be different in each given case. But the effect of the application of the rule to a particular case, should not be confounded with the legitimacy of applying it.

Again, at pp. 78 and 79, the text says:

As stated earlier, and as approved by the Supreme Court: "The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object, to be attained" (*Workmen of Dimakuchi Tea Estate v. Management of Dimakuchl*

Tea Estate, AIR 1958 SC 353). In the words of Shah, J: "It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature" (*New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* AIR 1963 SC 1207). Therefore, when two interpretations are feasible the Court will prefer that which advances the remedy and suppresses the mischief as the legislature envisioned (*Carew & Company v. Union of India,* AIR 1975 SC 2260). The Court should adopt a project oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits. "(*Busching Schmitz Private Ltd. v. P.T. Menghani*, AIR 1977 SC 1569).

In view of the reasons stated earlier, I would allow the appeal with costs here and below, set aside the order of the learned High Court Judge and refund the deposit to the appellant.

Mokhtar Sidin JCA:

We have given our decision earlier in respect of this appeal whereby we have dismissed the appellant's appeal with costs. Now I give my reasons for doing so.

In this case the appellant appealed against the decision of the learned Judge of the High Court, Kuantan who had allowed an application by the respondent for an order of *certiorari* to quash the decision of the Tribunal Khas yang ditubuhkan di bawah s. 7 Enakmen Tanah Kesultanan 1919 (hereinafter referred to as the 'Tribunal') with regard to a claim made by the appellant in relation to a piece of land held under C.T. No. 5941, Lot No. 4821, Mukim of Kuala Kuantan (hereinafter referred to as the 'said land').

On 28 May 1973 the late Sultan of Pahang, DYMM Sultan Abu Bakar Ibni Almarhum Sultan Abdullah leased out to the respondent the said land for a term of 50 years with effect from 1 July 1964. The lease was made under the Sultanate Land Enactment 1919 (Pahang) (hereinafter referred to as 'the Enactment'). Subsequently, the initial lease was then substituted with a new supervening lease of 99 years with effect from the same date *viz-a-viz* 1 July 1964. I believe this substitution was done because of the amendment to the Enactment which allows the lease to be extended to 99 years from 50 years as originally stated in the Enactment. It is not disputed that proper authorisation was done by the late Sultan and the then Menteri Besar as required by the Enactment.

On 14 May 1985 the appellant instituted a claim before the Tribunal claiming *inter alia*, that:

(i) by virtue of ss. 4 and 6 of the Enactment the lease of the said land to the respondent was invalid on the ground that the respondent is not a natural person nor a subject of the Ruler of the State;

(ii) further or in the alternative, the respondent has been in breach of cl. 2(c) of the lease and the provision of ss. 4 and 6 of the Enactment in that the applicant had purported to create a trust and sub-leases over the said land without the corresponding written consent of the Menteri Besar.

After hearing Counsel for the appellant and the respondent the Tribunal in its decision dated 17 December 1991 held that:

(i) the lease of the land by the late Sultan is null and void for the following reasons:

The word "subjects" appearing in s. 6(i)(b) (as well as s. (i)(a)), to my mind, restrict the meaning of the word "persons" to mean only natural persons who are not Malay subjects of the Ruler and thus, as the lessee, Sathask Realty Sdn. Bhd., is a company, it cannot be holding a lease over any Sultanate land as it is not a natural person, and thus the granting of the Head Lease to Sathask Realty Sdn. Bhd. is *ultra vires*.

(ii) as the Head Lease is void *ab initio*, the sub-leases created thereunder are accordingly void;

(iii) the creation of the sub-leases also contravenes s. 6(iii) of the Enactment as there is no evidence of the written permission of the Menteri Besar had been obtained prior to the creation of the sub-leases.

The respondent being dissatisfied with the decision of the Tribunal moved the High Court, Kuantan for an order of *certiorari* to quash the decision of the Tribunal on the grounds appearing in the statement filed pursuant to O. 57 of the Rules of the High Court. Briefly, the respondent contended that the Tribunal was wrong in law in holding that the word 'persons' found in s. 6(i)(b) of the Enactment meant only natural persons to the exclusion of body corporate like the respondent. Secondly, the respondent contended that the Tribunal had misconducted itself in holding that the sub-lease contravenes s. 6(iii) of the Enactment when this was not an issue raised by the appellant in its claim.

The learned Judge granted the application by the respondent for an order of *certiorari* and quashed the decision of the Tribunal. The reason given by him is that the Tribunal had committed an error of law which is apparent on the face of the record. From the judgment it appears to me that the learned Judge's finding is based solely on the interpretation of the word 'person' in the Enactment.

I believe the learned Judge was right when he found that an error of law which is apparent on the face of the record is sufficient to grant the order

as prayed by the respondent. I believe that both parties did not dispute this since no argument in this respect was tendered before us. As such there is no necessity for me to state the law, how and when the order of *certiorari* could be made available.

From the record it appears that there is only one issue before us, since the appellant had abandoned the issue of sub-lease before the learned Judge, which is for this Court to consider whether the appellant is correct in his contention that s. 6(i)(b) of the Enactment does not include a corporation such as the respondent. Section 6(i) reads as follows:

> 6(i) The Sultanate lands or portions thereof may from time to time be leased -
>
> (a) by writing under the hand of the Ruler of the State to Malay subjects of the said Ruler, or
>
> (b) by writing under the hand of the Ruler of the State and of the Menteri Besar to persons not being Malay subjects of the said Ruler,
>
> for any term not exceeding 99 years.

It was submitted by the appellant that the expressions "Malay subjects" and "persons" in the above section apply only to natural persons and not to a company. The only question before us is the interpretation and the application of the word "person" in s. 6 of the Enactment. It was contended by the appellant in the Court below and before us that the normal meaning of a person which includes a body corporate is not applicable to the word "person" in s. 6 of the Enactment. The statutory meaning of the word person is defined in s. 2 of the Interpretation & General Clauses Ordinance, 1948 (hereinafter referred to as 'the Ordinance'). Section 2(61) provides as follows:

> (61) 'person' and 'party' includes any body of persons, corporate or unincorporate;"

Appellant contended that the ordinance is not applicable to the Enactment on two grounds. Firstly the Enactment was enacted much earlier than the Ordinance and thus the interpretation of the word 'person' in the Ordinance would not be applicable to the Enactment, and secondly the general reading of s. 6(i) would not permit the reading of the word "person" to include a corporation.

As to the first it was contended by the appellant that the Enactment was enacted in 1919 when there was no limited company or corporation in existence in the State of Pahang. The Ordinance being a later creature is not applicable. Thus the Enactment did not envisage a limited company for its purpose. The simple answer to this as submitted by Counsel for the respondent is that at that time there was already in existence the General Clauses Enactment,

1897. The General Clauses Enactment is the predecessor of the Ordinance and it was adopted by the State of Pahang (being one of the four Federated Malay States then) in 1897 itself. Section 2(xviii) of the General Clauses Enactment provides as follows:

> (xviii) 'Person' shall include any company or association or body of individuals whether incorporated or not.

The meaning of the word "person" in the General Clauses Enactment, 1897 though not identical to the word "person" in the Ordinance, means more or less the same. Thus when the Enactment was enacted the legislature was aware of the General Clauses Enactment, 1897 and would definitely have known what is meant by the word 'person'. It means the same as it is now. Thus the first limb of the argument forwarded by the appellant failed.

Secondly, Counsel for the appellant had gone to great length to convince us that the word "person" or "person" contained in s. 6 of the Enactment conveyed a totally different meaning from that of the Ordinance. He had cited English laws and authorities in respect of this. I am of the view that they are not applicable to the present case. As I understand the appellant's arguments the word "person" or "person" in s. 6 of the Enactment conveyed a special meaning which is limited to natural persons and not otherwise. Appellant contended that s. 6 should be read as a whole together with the words "Malay subjects of the said Ruler". When this is done the word "person" in s. 6(i)(b) can only mean a natural person and thus not applicable to the respondent being a body corporate. I have scrutinized s. 6 and in my view the natural meaning of s. 6(i) of the Enactment envisages that the Ruler could lease or sell the Sultanate lands to two categories of people. The first under s. 6(i)(a) whereby the Ruler by his writing, without the consent of the Menteri Besar can lease or sell any of the lands to the Malay subjects of his. Under s. 6(i)(b) the Ruler of the State by writing could lease his land to any other person (including a corporation) not being a Malay subject of his but it must be with the consent of the Menteri Besar. To read it otherwise would not give the required effect to that section. Thus the late Sultan had done exactly what s. 6(i)(b) required him to do in that he leased the said land to the respondent (a corporation) by writing under his hand as Ruler of the State and of the Menteri Besar who gave his consent by signing the lease instrument. As such I find that there is no merit in the second argument put up by the appellant.

From the record and as submitted by the respondent's Counsel, the appellant had abandoned the second ground before the learned Judge. Though that was so, the learned Judge in his judgment had made reference to it. As such I am of the opinion that I should say something on the sub-leases.

Appellant had contended that the sub-leases are null and void because they were done contrary to clause 2(c) of the express provisions of the lease. Clause 2(c) provides as follows:

> (2) The Lessor hereby covenants with the Lessee as follows:
>
> ...
>
> ...
>
> (c) To consent to and permit the lessee to assign sub-lease or part with the possession of the demised land thereof to any respectable and responsible company, person or persons for the residue of the term hereby granted provided always that the written consent of the Menteri Besar of the State is first had and obtained. Such permission shall not be unreasonably withheld.

The question arising from this is whether the sub-leases had contravened the express provision of the lease whereby the written consent of the Menteri Besar had not been obtained for those sub-leases.

As can be seen from the record the list of the sub-leases was also attached. I am not sure whether it is attached to the lease instrument or not. Altogether there were 17 sub-leases of which 15 of them were sub-leased before the lease instrument was executed. Looking at those sub-leases I found that those 15 sub-leases were done after the lease was granted to the respondent but before the deed instrument was executed. It must be noted that the deed instrument was executed by the late Sultan of Pahang and the then Menteri Besar. The execution by the then Menteri Besar signified that the Menteri Besar had consented to the lease when it is clearly stated before the signature of the Menteri Besar as follows:

> Signed by
>
> Menteri Besar of the State of Pahang in token of his assent to this Lease.

With that I am of the opinion that even if the list of the sub-leases was not an appendix to the lease instrument, the Menteri Besar knew about the sub-leases when he signed the lease instrument. With that knowledge it is in my opinion he had consented to the sub-leases when he signed the lease instrument.

As I have stated earlier any error of law on the face of the record is sufficient to attract the order of *certiorari*. Since it has been established that there is at least one error committed by the Tribunal the learned Judge was right in granting the order of *certiorari*. As such I would dismiss the appeal with costs.

Reported by Gan Peng Chiang